APPEAL NO. 040325
FILED MARCH 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 20, 2004. (Although the hearing officer recites the record was closed on January 29, 2004, that was not evident on the audiotape.) The hearing officer determined that the respondent/cross-appellant (carrier) is relieved of liability because the appellant/cross-respondent (claimant) did not timely notify his employer of the claimed injury; that the claimant sustained an injury on _____; that the injury is not compensable because it was not timely reported; and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appealed the reporting issue, contending that his first visit to the doctor was for a condition unrelated to the claimed injury, that the claimant's son reported the injury "about 2 weeks" after the claimant realized he had a work-related injury, and that he has had disability. The carrier appealed the injury issue contending that the claimant's condition is not related to his employment or his work. The carrier responded to the claimant's appeal, urging affirmance on those appealed issues. The file does not have a response to the carrier's appeal.

DECISION

Affirmed.

The claimant, an insulation installer, testified that on _____, as he was working he twisted, his foot slipped, and he felt a shock like pain in his leg, knee, and foot. The claimant testified that the sensation went away and he continued working. It is undisputed that the claimant saw a doctor the next day, (day after date of injury), and although the claimant said it was for another condition (gout) the medical report documents back pain "& ® leg x 2 weeks." The claimant returned to the doctor on July 21, 2003, and the doctor again noted back pain and prescribed stronger medication. The claimant then went to another doctor (unclear whether it was with the same medical group as the original doctor) on July 27, 2003, and had emergency spinal surgery on July 29, 2003. The operative report of that date states a clinical history that the claimant "had acute on set of low back and lower extremity pain following an on the job injury which he did not report to his supervisors." The note goes on to say that the claimant "has been in intractable pain since that time." The claimant was receiving medical benefits under his group health plan. Although disputed, the earliest notice of a work-related injury given to someone in a supervisory or management position was when the claimant's son reported the injury to the claimant's supervisor on August 11, 2003. (The carrier contends the first notice was at the benefit review conference.) The key to this case is the date of injury, _____, and whether the claimant had good cause

for failing to timely report the injury to the employer. *See* Section 409.002(2). The claimant contends that he had good cause through trivialization.

Section 409.001 requires that an employee, or a person acting on the employee's behalf, report the injury to the employer within 30 days of the date of injury. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier of liability for the payment of benefits for the injury. Section 409.002. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. Similarly, whether good cause exists for failing to timely report an injury is a question for the fact finder. Texas Workers' Compensation Commission Appeal No. 93550, decided August 12, 1993. A claimant must act with diligence in notifying the employer of a claim. Texas Workers' Compensation Commission Appeal No. 93649, decided September 8, 1993. The test for good cause is that of ordinary prudence or "that degree of diligence that an ordinary person would have exercised under the same or similar circumstances," and it is within the purview of the hearing officer to determine what ordinary prudence is under the circumstances. *Id*. A reason or excuse generally recognized as good cause for late reporting is the belief of the employee that the injury is trivial. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994.

Although the hearing officer did not make a finding, or specifically discuss good cause, we can fairly infer from her finding that the claimant knew or should have known that his injury was work related on (day after date of injury), and that she did not believe that good cause existed after that date. The conclusion that the claimant did not timely report his injury (and by inference) did not have good cause for failing to do so is supported by the evidence. Regarding the carrier's appeal that the claimant's medical condition was not work related, the hearing officer's determination on that issue is amply supported by the evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Robert W. Potts
Appeals Judge